From: Jonathan Graehl
To: Microsoft ATR
Date: 1/23/02 3:10pm
Subject: Microsoft Settlement

I have read and am opposed to the proposed settlement of your suit brought against Microsoft (http://www.usdoj.gov/atr/cases/ms-settle.htm). I feel the end result will be little more than another protracted court case five years down the line as Microsoft continues to abuse its monopoly position with little fear of meaningful consequences.

A better settlement would ensure that Microsoft's monopolies in unrelated software markets (for example, Microsoft has a monopoly or dominant position in a different category of software with each of these: Windows, Internet Explorer, Outlook/Exchange, Word, Excel, PowerPoint, Visio) cannot be leveraged to gain monopolies in new categories of software, or exclude competition from interoperating on the level of communication protocols, file formats, and application programming interfaces - especially by volunteer Open Source software. Provisions for RAND licensing of patents held by Microsoft aimed at denying interoperability are not sufficient; the licensing must be free to the public.

Technical communications between different Microsoft applications (new and existing) should be performed only through a "Chinese Wall" where APIs, file formats, and protocols are available to the public as well as to the Microsoft teams. Enforcing this would require oversight by software engineering experts - the level of detail available must be sufficient to allow interoperable products to be created without any obstacles from patents, nondisclosure, or necessity for reverse-engineering.

Any file or network communication that is sent between different installations of a Microsoft product must be publicly documented as well, in sufficient technical detail to allow, without any encumbrance, other programmers to create from those specifications a replacement for the Microsoft product that can interoperate without any limitations compared to the original Microsoft article.

Loopholes allowing Microsoft to dictate in any way the terms of use of this technical information (including NDAs and non-royalty-free patent licensing), who to make this information available, or what information to make available would kill the benefit of this settlement, and result in another court case years down the road as Microsoft continues to illegally leverage its monopoly (to the detriment of the economy).

Regulating the price at which Microsoft may sell or bundle products would not benefit consumers, as the actual marginal cost for a copy of software is zero dollars.

I also do not believe that forcing disclosure of the source code of Microsoft

Internet Explorer is necessary or fair. It would be more useful to force Microsoft to make publicly available the technical specifications for the APIs that integrate Internet Explorer functionality with basic Operating System Shell (Explorer) and its Office Suite, again, sufficient that competitors, Open Source or commercial, can offer competing browsers that can benefit equally with Internet Explorer with the web-browser integration in other Microsoft products. This would require modification of all Microsoft products that use Internet Explorer directly to use a new public API that would allow a replacement browser to fill the same role.

It is most important that Microsoft be forced to make public technical specifications that allow interoperable competition to their various products, which would have immeasurable benefits to the economy and to consumers, as real (even free) alternatives to the Microsoft monopoly will inevitably arise, and result in competition ensuring better software from Microsoft (and their competitors) for a lower price than we would see under the current, flawed settlement.

There is always the risk that no matter what the settlement dictates, Microsoft will drag its feet and intentionally provide poor quality technical information in order to continue to make it prohibitively costly to compete in its monopoly arena. An excellent concrete test of the quality of Microsoft's compliance has been proposed by Dan Kegel, which in addition to costing Microsoft more money as the quality and accuracy of their documentation decreases (thus creating a financial incentive for satisfaction of its duties), would provide great benefit to consumers by allowing them to use Microsoft Office without being forced to use Microsoft Windows (the dominance of Microsoft's Office suite in the business arena is the primary reason that many users are locked into using a Microsoft operating system):

(begin quote)

I recommend that subsections 14b and 14c be struck, and replaced with a new subsection reading

"Contracting with a Third Party to Enhance Wine to Support Microsoft Office.

Within 60 days of entry of this Final Judgment, Microsoft must contract with one or more outside firms to enhance the Open Source Windows Emulator WINE to be able to install and run Office 2000 under Linux. The work shall continue, with new releases of Wine occurring every 30 days, until completed, or until the expenses incurred by the outside firms reach 1 percent of the total development and marketing costs of Office 2000. The resulting enhancements to Wine shall be released under the same license used by Wine itself.

Furthermore, as soon as practicable, but in no case later than 60 days prior to the date each new version of Office becomes commercially available for use with a Windows Operating System Product, Microsoft shall again contract with one or more outside firms to enhance the Open Source Windows Emulator WINE to

be able to install and run the new version of Office under Linux. The work shall continue, with new releases of Wine occurring every 30 days, until completed, or until the expenses incurred by the outside firms reach 1 percent of the total development and marketing costs of the new version of Office. The resulting enhancements to Wine shall be released under the same license used by Wine itself. "

Furthermore, the license agreement for Microsoft Office and all other Microsoft products sold separately from a Microsoft Operating System shall not require the user to own any other Microsoft Software or Microsoft Operating System.

(end quote)

Let's not repeat the mistakes that were made in the previous consent decree, which Microsoft has made a mockery of since, by leveraging their monopoly into new territory without regard for the law. One need only look at the increased sales of their products, combined with the prices to buy them, compared to the fixed development costs, and their resulting cash reserves, to see that Microsoft is profiting at the rest of the economy's expense. Making Microsoft a government-regulated monopoly and telling them what products they can and cannot sell, for what prices, is not a good solution (although they should not be allowed to coerce OEMs into distributing software package A without software package B). The solution with the most benefit to the economy, while still allowing Microsoft to compete by producing software as well as it can, is requiring Microsoft to publish technical specifications sufficient to allow the creation of competing products (Open Source or commercial) without any impediment due to Microsoft's monopolies in several categories of software.

I cannot emphasize enough that any remedy that does not allow the creation of Open Source alternatives to all of Microsoft's software components will result in higher prices and lower quality software. Microsoft should not in any case be allowed to dictate the licensing of competing products, just as we should not compel Microsoft to give away its products (or their source code).

An ineffectual settlement that allows Microsoft to continue to shut out competition, rather than beating it with a better product at a better price, will be an embarrassment for the DOJ, for this administration, and for the people.

A concerned citizen of the United States of America,

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